



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

TWELVE OAKS MEDICAL CENTER  
c/o HOLLOWAY & GUMBERT  
3701 KIRBY DRIVE, SUITE 1288  
HOUSTON TX 77098-3926

**Carrier's Austin Representative Box**  
BOX #54

#### **MFDR Date Received**

JUNE 28, 2005

#### **Respondent Name**

TEXAS MUTUAL INSURANCE CO

#### **MFDR Tracking Number**

M4-05-A053-02

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary Dated June 27, 2005 taken from the Table of Disputed Services:** "...Per TWCC Rule 134.401(c)(6)...claim pays @ 75% of total charges as charges exceed \$40,000.00 stop-loss threshold...services were unusually extensive based on 6 surgical operations related to IE's spinal surgery; IE admitted for disk herniation C3-4, C4-5, C5-6."

**Requestor's Supplemental Position Summary Dated July 28, 2005:** "...The services provided to [injured worker] were for treatment of severe pain resulting from 'C3-4 disk herniation, noncompressive', 'C4-5 disk herniation, compressive to the right with spinal cord and nerve root stenosis', and 'C4-5 cervical disk herniation with compression to the left of spinal cord and nerve root.' As a result of his condition, [injured worker] underwent several operations summarized on the operative report as 1) C4-5 anterior cervical discectomy with decompression of spinal cord and bilateral neural foramina; 2) C5-6 anterior cervical discectomy and decompression of spinal cord and bilateral neural foramina; 3) anterior cervical arthrodesis C4-5; 4) anterior cervical arthrodesis C5-6; 5) anterior cervical instrumentation, Zimmer plate and screws; and 6) harvesting large left iliac crest structural graft. Postoperatively, the records note [injured worker] had abnormal blood and hematology values indicating possible infection. Under Rule 134.401(c)(6) of the acute care inpatient hospital fee guidelines of the TWCC, this claim would be reimbursed at the stop-loss rate of 75% as the total audited charges exceed the minimum stop-loss threshold of \$40,000.00 resulting in a reimbursement of \$31,995.02. Based on the clear wording of the rules of the TWCC, the carrier is liable for an additional sum owed our client in the amount of **\$26,746.12.**"

**Amount in Dispute:** \$26,746.12

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary Dated June 30, 2005:** "This dispute involves this carrier's payment for dates of service in dispute for which the requestor charged \$42,660.02 for a two day inpatient stay for services that were NOT unusually extensive or costly. This carrier reimbursed the requester for two days surgical per diem (\$1,118)...The requester was also reimbursed cost plus 10% for the implants. The issues in this case are whether or not this bill meets the criteria necessary to receive reimbursement at a stop loss rate...It is the carrier's position the requester has not supported...that the charges in dispute were unusually costly or that the services were unusually extensive."

**Respondent's Supplemental Position Summary Dated September 7, 2011:** "The Third Court of Appeals indicated the stop-loss exception has two criteria that must be met, total audited charges must exceed \$40,000.00 and the hospital admission must demonstrate unusually costly and unusually extensive services. Nothing intraoperative and nothing postoperative impacted the hospital stay. There was nothing extensive or costly provided this patient during the hospital course..."

**Responses Submitted by:** Texas Mutual Insurance Company

### ***SUMMARY OF FINDINGS***

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
June 28 through 30, 2004	Inpatient Hospital Services	\$26,746.12	\$0.00

### ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

The services in dispute were reduced/denied by the respondent with the following reason codes:

#### **Explanation of Benefits**

- F - Fee guideline MAR reduction
- TR – reimbursed in accordance with the Texas Hospital Fee Guideline. Services do not appear unusually costly.
- YM – the reimbursement for the service rendered has been determined to be fair and reasonable based on billing and payment research and is in accordance with Labor Code 413.011(D).
- 891 – no additional reimbursement allowed after review of appeal/reconsideration

Dispute M4-05-A053 was originally decided on June 19, 2008 and subsequently appealed to a contested case hearing at the State Office of Administrative Hearings (SOAH) under case number 454-09-0520.M4. This dispute was then remanded to the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) pursuant to a February 16, 2009 SOAH order of remand. As a result of the remand order, the dispute was re-docketed at medical fee dispute resolution and is hereby reviewed.

#### **Issues**

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

#### **Findings**

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be

considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$42,660.02. The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its original position statement asserts that "The services provided to [injured worker] were for treatment of severe pain... Postoperatively, the records note [injured worker] had abnormal blood and hematology values indicating possible infection. Under Rule 134.401(c)(6) of the acute care inpatient hospital fee guidelines of the TWCC, this claim would be reimbursed at the stop-loss rate of 75% as the total audited charges exceed the minimum stop-loss threshold of \$40,000.00 resulting in a reimbursement of \$31,995.02." The requestor asserts that it is entitled to the stop loss method of payment. As noted above, the Third Court of Appeals in its November 13, 2008 opinion concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services compared to similar services or admissions; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to discuss or demonstrate that the particulars of the admission in dispute constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
4. For the reasons stated above, the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
  - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." The length of stay was two days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of two days results in an allowable amount of \$2,236.00.
  - 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed \$251.00 for Kanamycin 1 GM. The requestor did not submit documentation to support what the cost to the hospital was for this item billed under revenue code 250. For that reason, reimbursement for this item cannot be recommended.
  - 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)."

- Review of the requestor's medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

Charge code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
81389991	4.2x12mm screw	4.2x12mm variable screw Trinica	1 @ \$212.00	\$212.00	\$233.20
	48mm plate	48mm 2lvl Trinica select cervical plate	1 @ \$1467.00	\$1467.00	\$1613.70
TOTAL ALLOWABLE				\$1846.90	

The division concludes that the total allowable for this admission is \$4082.90. The respondent issued a total payment of \$5248.90. Based upon the documentation submitted, no additional reimbursement can be recommended.

### **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to discuss and demonstrate that the disputed inpatient hospital admission involved unusually extensive, and unusually costly services. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

### **ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

December 2012  
\_\_\_\_\_  
Date

### **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a *certificate of service* demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**